

Application No. 09/775,265

Response and Amendment dated February 17, 2006

In Reply to Office Communication mailed October 17, 2005

REMARKS

The Office Action dated October 17, 2005 rejected claims 65-102 under 35 U.S.C. 103(a) as being unpatentable over the combination of Barni et al., U.S. Patent No. 6,064,981 ("Barni") in view of Sheehan et al., U.S. Patent Publication no. 2001/0049647 ("Sheehan").

Following entry of the present Amendment, claims 65 - 102 are pending in this application, with claims 65, 86, and 96 being written in independent form and claims 66-85, 87-95, and 97-102 depending therefrom. Applicants have amended claims 65 and 81 to address the informalities identified in the Office Action. Additionally, Applicants have amended independent claims 65, 86, and 96, and dependent claim 68 to clarify the subject matter of the present invention and to place the present application in better condition for allowance. Applicants submit that the above amendments do not add new subject matter, and respectfully request reconsideration of the merits of the present application in accordance with these amendments and the following remarks.

The Office Action also objected to the title of the invention as non-descriptive. While Applicants believe that the original title is technically accurate and descriptive of the present invention, in the interest of efficiency Applicants have amended the title in a manner similar to the suggestion provided in the Office Action.

Applicants believe that the present Amendment adds no new subject matter and respectfully request the entering of this Amendment and reconsideration and allowance of all claims in conjunction therewith.

35 U.S.C. § 103(a)

The Office Action dated October 17, 2005 rejected claims 65-102 under 35 U.S.C. 103(a) as being obvious in view of the combination of Barni and Sheehan.

Specifically, the Office Action alleges that the claimed invention is obvious because Barni discloses an Internet-based electronic market for negotiating transportation services enabling buyers and sellers to conduct auctions, to post and buyers to view quotes for one or more transportation services, and to communicate electronically via the system and because Sheehan allegedly teaches an Internet-based multilevel private and public auction marketplace

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enabling users to conduct staged auctions that can progress from private to public auctions based on one or more auction rules, provides purchase-order fulfillment systems to automatically generate purchase orders, and notify users of auctions via e-mail. Insofar as this ground for rejection applies to the claims as presently amended, Applicants respectfully traverse.

As an initial matter, the Office Action alleges that Sheehan is “in an analogous art of auction management.” To the contrary, Applicants respectfully assert that Sheehan is not an analogous art with respect to the present invention. The motivations and methodologies underlying auctions for transportation lanes, such as the present invention, and those for the sale of merchandise, such as Sheehan, are significantly different. For example, the auction of Sheehan is specifically designed to “drive higher returns” and obtain an “often higher price on goods,” because the “top bidder... wins the auction.” In contrast, the present invention provides the capability to limit the number of bidders in a round to a preferred group, who are typically those with whom a relationship has already been established, allowing the auction initiator to narrow the amount of information that must be sorted through and reviewed upon completion of an auction in order to determine a winning bid. Thus, reducing the time and effort necessary to identify a winning bid. In further contrast to Sheehan, a winning bid of the present invention is not merely the highest or lowest price offered by a specific bidder, but a selection made based on all information, including price, submitted by the bidder.

As explained in Applicants’ specification, and discussed in previous responses, various embodiments of the present invention address, *inter alia*, the failing that currently available centralized electronic market solutions have not allowed carriers and shipping customers to adequately exploit established business relationships in a manner similar to what occurs in traditional real-life market situations. As previously discussed and particularly pointed out in the Office Action, Barni does not mention or otherwise address this failing, and similarly does not disclose or teach the various embodiments of Applicants’ invention as is claimed.

Furthermore, Sheehan simply provides general technology for enabling a multi-level auction for merchandise, and is otherwise not specifically applicable to auctions for transportation lanes, such as the present invention as presently claimed. Applicants assert that an individual skilled in the art at the time of the present invention would not have looked to Sheehan

nor found any motivation to combine Sheehan with Barni. Additionally, the present invention as presently claimed provides significant advantages over both Barni and Sheehan standing alone or in combination.

Specifically, Claims 65 and 86, as presently amended, provide an electronic market and a software tool for negotiating transactions regarding the exchange of transportation services between buyers and sellers. The electronic market includes an auction transaction system enabling the submission, filtering, and review of bids, providing conditional awards to winning bids, as well as allowing a bidder a further opportunity to review and accept or reject the award, catalog transaction system and in electronic communication with the auction transaction system, and a means for said buyers and sellers to communicate with said auction transaction system and said catalog transaction system. The means for communicating is adapted to enable buyers and sellers to interact through the catalog transaction system and the auction transaction system. Further, the market enables buyers and sellers to designate selected other buyers and sellers as preferred trading partners within the auction transaction system or catalog transaction system. Using the designation of these preferred trading partners, the market optionally allows particular quoted rates and particular auctions to be made available to only said preferred trading partners.

Likewise, independent claim 96 recites a software application for conducting a multiple level non-public auction in a transportation services market among a plurality of buyers and a plurality of sellers, where the software performs the functions of establishing the format of the auction as having multiple levels of non-public auction where the levels are arranged from a first level to a last level, and defining auction parameters detailing a form of acceptable bids and an identification of one or more transporation lanes or capacity being auctioned. The auction parameters also include the designation of certain buyers or sellers as preferred trading partners for one or more levels of said multiple level non-public auction wherein only those buyers or sellers designated as preferred trading partners may bid in any one level of said multiple level non-public auction. Starting at the first level and then for each level of said multiple level non-public auction, the method includes publishing notice to buyers and/or sellers designated as preferred trading partners, receiving bids from designated preferred trading partners, filtering and monitoring the received bids to identify a winning bid. A bidder obtaining a winning bid may

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also review the winning bid and accept or reject it. The method may then proceed to a next level of the non-public auction, if available, if an instruction is received indicating no winning bidder has been identified from the received and monitored bids.

In contrast, Barni discloses an Internet based system that allows multiple carriers and multiple shipping customers to exchange shipping information electronically. The Barni system allows carriers to post rates via an Internet web site and provides a mechanism whereby customers can either place secure orders based upon those posted rates or can place bids in a online auction environment. Barni does not disclose the use or concept of preferred trading partners nor making particular quoted rates and/or particular auctions available to only designated preferred trading partners. Furthermore, Barni does not provide conditional awards or the ability of an award recipient to accept or reject an award. Likewise, Sheehan fails to disclose conditional awards or the ability of an award recipient to accept or reject an award. Accordingly, neither Barni nor Sheehan, standing alone or in combination, disclose an Internet based system that allows an auction initiator to award conditional awards to winning bidders, nor do they provide for a bidder to accept or reject an award of a winning bid.

Thus, Applicants respectfully submit that Barni, alone or in combination with Sheehan, fails to disclose, teach, or otherwise suggest the present invention as recited in the independent claims. Applicants respectfully request the withdrawal of the rejection of claims 65, 86, and 96. Further, claims 66 – 85 depending from claim 65, claims 87 - 95 depending from claim 86, and claim 97 – 102 depending from claim 96 are distinguishable over the applied references for at least the reasons described in connection with independent claims 65, 86, and 96. Therefore, withdrawal of the rejection of all dependent claims is respectfully requested.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration and the timely allowance of the pending claims. The Examiner is invited to contact Applicants' undersigned representative to expedite prosecution.

Should the Examiner have any questions concerning this matter, he or she is invited to contact the Applicants' undersigned attorney at the telephone listed below.

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Respectfully submitted,

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